

From: Jeremy Gully
Sent: 28 January 2019 13:20
To: 'Metcalf, John' <John.Metcalf@IOW.gov.uk>
Cc: 'Miles, Helen' <Helen.Miles@IOW.gov.uk>; 'Stewart, David (County Councillor)' <David.Stewart@IOW.GOV.UK>
Subject: FW: letter to Ward Coucillors

Dear Mr Metcalfe,

Felix Hetherington and I as Trustees of Bembridge Harbour Trust, recently meet with Michael Murwill and Brian Tyndall as ward councillors. We noted that Brian attended strictly on the basis that he could not engage on any planning matters and accordingly the conversation was focused on good governance of the Harbour.

We discussed the fact that unless the Statutory Harbour Authority gets the funds due to it by law (ie it retains all the incomes it should under section 31 i) and ii) of the '63 Act) it will not be able to meet its Statutory obligations. Public confidence will be further eroded as the Harbour's deterioration accelerates unnecessarily and dependent communities suffer.

We set out some new questions raised by the Bembridge Harbour Improvements Company Ltd [BHIC] accounts for the year to 31st March 2018 which were published on 28th December 2018 on the Companies House website. BHIC is the Statutory Harbour Authority [SHA].

The IWC has a general responsibility to see proper conduct in the management of assets of undoubted importance to the dependent communities. The IWC has some responsibilities of oversight of the Harbour within the *Pier and Harbour Order (Bembridge Harbour) Confirmation Act 1963* [the '63 Act] . The IWC receives only such limited accounting information as the Companies Act now generally requires (in earlier years full accounts were provided) and this does not provide sufficient information to answer the following questions raised from the latest accounts in the context of how the transactions comply with the '63 Act , in particular section 31 i) and ii).

We ask that the IWC to consider the points below and if they see fit, seek some advice on the questions raised from the accounts to 31st March 2018, a copy of which is attached. If the IWC cannot be certain that these transactions are compliant with the '63 Act we urge that they ask for a full (and evidenced) explanation from BHIC. These questions largely focus on BHIC's dealings with other Thorpe owned companies.

Harbour Management: 2018 Accounts, section 5, Related party transactions.

In these questions we assume reference to "the company" is reference to BHIC . Question order reflects the order in the accounts at section 5.

The accounting convention of showing liabilities in brackets is not followed in this section of the March 2018 accounts. This is both potentially confusing and also inconsistent with the 31st March 2015 published accounts (the last occasion when Related Party Transactions were shown).

BHT note that recent accounts as published are not presented by or carry any endorsement from any accountancy firm . We consider it would be good practice for the accounts of a Statutory Body to be produced by an independent qualified firm . If that is the case here, it is not clear.

Relationship with Hawk Property Development Ltd [HAWK]

- 1) Why is BHIC “providing security to the group’s bankers for the borrowings held in other group companies” ? Is it lawful for the SHA to offer such security under the provisions of the ‘63 Act? Is it appropriate in terms of directors fiduciary duties to BHIC, noting that no BHIC benefit is identified and that this same type of mechanism forced the harbour into administration in 2011.
- 2) Do BHIC provide management services to HAWK as stated? If so, what services, to whom and how is BHIC remunerated? (If BHIC do not provide these services the description is simply wrong, BHT note that in previous statements the directors advised the reverse, ie that HAWK provide management services to BHIC).
- 3) Why is rent is quoted at £76,000 when elsewhere it is quoted at £18,000 by the companies’ accountants? A possible explanation is that the figure might confusingly include other charges - an explanation Mr Thorpe has used in answer to questions in earlier accounts. But if so, knowing it causes confusion, why is it misdescribed again? This is further confused by the statement that [BHIC the company] “provides management services”.
- 4) Have the directors received any direct remuneration or reimbursements of costs? Have the directors (who are also the only shareholders) received any dividends in this or other years (whether directly or indirectly through their shareholdings in other linked companies)? If so can it be demonstrated that they were not in excess of the limit set out in section 31, i) and ii) of the ‘63 Act?
- 5) As conventional annotation is not used (when negative sums would shown as (£xxxx) i.e. in brackets), BHT are left to deduce from the wording that the April 2017 balance figure of £255,854 is a liability. If so why was the liability allowed to build to that level? In the context of the ‘63 Act what was the purpose and nature of the obligations, and what were the terms? By what mechanism was it possible for a BHIC account with HAWK to be reduced by £205,498 in a single year, when BHIC were apparently unable to fund harbour improvements?
- 6) Why, generally, and particularly by contrast with the accounts to 31st March 2015, the loan by HAWK to BHIC of £1.2m is not shown in the list of Related Party Transactions?

Bembridge Investments Ltd [BIL]: loans provided by the company

- 7) Assuming the description of “the company” is consistent, why does BHIC, the Statutory Harbour Authority, provide a loan to BIL of £350,171? How does that serve the SHA’s interests under the terms of the ‘63 Act? What are the terms? Why was this facility favouring BIL increased by £334,351 in a single year, while at the same time BHIC advises the IWC it is short of funds?

Bembridge Boat Storage [BBS] loans provided by the associate company

- 8) Why does BHIC have a loan of £78,100 from BBS ? Why is it that the March 2015 accounts showed a loan in the opposite direction, with BBS owing BHIC £120,914 - a gross change in position of £199,014? And how does each loan properly relate to harbour purposes under the ‘63 Act?

General Questions

- 9) Given that an operating profit of £56k,37k,67k and 55K in the years 2013 to 2016 inc. disclosed by Mr Thorpe to the IWC in an email of the 06.07.2017 and Mr Thorpe advised 70% + increase in mooring incomes at planning committee in December 2017. Why has the profit and loss account only increased by £11,600? Does this represent the addition of all of the post-tax profit, or have dividends or other deductions been made? If so, as dividends are controlled in the '63 Act to a reasonable return on the £4,000 share capital, please enumerate and explain.
- 10) BHIC is owned by HAWK, which is also owned by Mr and Mrs Thorpe. Why have HAWK's bank debts reduced significantly, whilst BHIC's principal debt to Hawk of £1.2m has not been reduced? In the absence of other information HAWK's main incomes are assumed to come from BHIC. Why have Mr and Mrs Thorpe as the sole directors of Hawk (and BIL) and BHIC shown a consistent pattern of reducing the indebtedness of Hawk and BIL ,whilst they have chosen to take no steps to reduce the dept owed to Hawk over the period 2012 to March 2018.

It is obvious that these are material issues and what our legal and financial advisers call the 'muddling' of the finances of a Statutory Body with other co-owned private companies.

These issues are far from purely technical. The Statutory Harbour Authority's ability to perform its Statutory duties is entirely reliant on the proper application of its incomes, and harbour works would be wrongly restricted or prevented if funds were improperly distributed. BHIC's current approach of rigid non-disclosure on these matters is contrary to Government Guidance and is unhelpful.

The properly reinvested Harbour incomes are vital to retain and enhance its role as an engine of the local economy. Failure to consider these issues once drawn to the Council's attention may be read as 'turning a blind eye', and would contribute to the deterioration of this vital community asset – something BHT cannot countenance in honouring its Charitable Objectives.

Best Regards

Jeremy

Jeremy Gully

As Chair BHT

You may care to note that it is not just BHT who are asking for more openness; similar requests have been made by a number of other bodies independently, including: GMB Union , Bembridge Harbour User group (BHUG) and Bembridge Harbour Advisory Group (BHAG), as well as IWC itself. Mr Thorpe, when responding to such a request from his own advisory group said, "*we cannot contemplate following such a process and will continue to retain our financial records in total confidence*".

You will also be aware that Mr Thorpe spoke at the IWC Planning committee, asking whether it was considered reasonable for a planning authority to seek evidence of a company's ability to satisfy a financial commitment in connection with a planning obligation. The legal officer's position is that it is reasonable.

